

RFA Monthly Outlook – February 2024

Overview

It’s Groundhog Day in Washington D.C. as lawmakers have once again punted government funding until March 1st and March 8th, respectively. Like last month, we expect the appropriations process to be top of mind for lawmakers, especially given the limited number of sessions days in February—both the House and Senate are each in session for only 10 days this month, and only six days at the same time. Aside from the appropriations process, Congress will also try to address a number of other looming priorities, such as the border funding and Ukraine supplemental package, the bipartisan tax package, and reauthorization of the Federal Aviation Administration (FAA) and the National Flood Insurance Program (NFIP).

Aside from these issues, Congress will continue its regular cadence of Congressional hearings, with Treasury Secretary Yellen testifying before the Senate Banking and House Financial Services Committees in her FSOC capacity next week. Additionally, financial regulators will continue to pursue their agendas, working to finalize rulemakings before the presumed Congressional Review Act (CRA) deadline, which is hard to predict but could be as early as June. RFA provides our perspective on notable legislative, regulatory, and administrative activity for the February work period below.

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Congressional Activity

Even with limited legislative days, we expect ample Congressional activity this month as lawmakers race to avert a government shutdown and deal with several other topline priorities, such as the border funding and Ukraine supplemental package and the bipartisan tax bill. The Senate started off the week by resuming consideration of the nomination of Joshua Kolar to be a United States Circuit Judge for the Seventh Circuit. In the House yesterday, lawmakers voted on and passed Ways and Means Chair Smith’s (R-MO) Tax Relief for American Families and Workers Act of 2024. Today, the House is expected to vote on several immigration-related bills, such as H.R. 6678, the Consequences for Social Security Fraud Act, which makes social security fraud committed by an illegal immigrant a ground for deportation. Aside from the House Financial Services, Senate Banking, House Ways and Means, and Senate Finance Committee agendas (described in detail below), next month will feature several Congressional hearings on different policy topics.

Upcoming Hearings

- The **House Judiciary Subcommittee on Courts, IP, and the Internet** holds a field hearing in Los Angeles entitled, “Artificial Intelligence and Intellectual Property,” on February 2nd (tomorrow).

- The **House Transportation and Infrastructure Subcommittee on Aviation** holds a hearing on the state of American aviation and the FAA, where FAA reauthorizing will likely be discussed in detail.
- The **House Natural Resources Committee** holds an oversight field hearing in Sierra Vista, Arizona entitled, “Biden’s Border Crisis: The Consequences of Failing to Secure Federal Border Lands,” on February 8th.
- The **Senate Energy and Natural Resources Committee** will hold a hearing to examine the Biden Administration’s decision to temporarily halt pending approvals for liquified natural gas exports.

Appropriations

Congress passed a continuing resolution to fund the government until March 1st and March 8th, respectively. The CR funds the Departments of Transportation, Agriculture, Energy, Veterans Affairs, and the Food and Drug Administration until March 1st. All other agencies, including defense, are funded until March 8th.

Lawmakers will once again scramble to keep the government open. Although, this time around, 302(b) allocations for subcommittees have been agreed to in the House and Senate. Given this fact, we believe the most likely path to averting a government shutdown is passing an omnibus package under a suspension of the rules, which would be split into two to four parts (minibuses). Although, this could be subject to change.

As for the Motion to Vacate (MTV), we think frustration with the Speaker is clearly growing amongst the House Freedom Caucus, but it has not reached a boiling point yet. According to reports from those familiar with House Freedom Caucus thinking, it is unlikely that any member utilizes the MTV for a spending bill.

Bipartisan Tax Package

The House of Representatives overwhelmingly passed the bipartisan tax deal struck by Ways and Means Chair Smith and Sen. Wyden (D-OR) on suspension of the rules yesterday, to the ire of some conservatives and progressives. While the bill passed by more than a 2/3rds majority, multiple GOP lawmakers have expressed frustrations with how the negotiations were handled—there was ample secrecy and a lack of individual member engagement. California and New York members were also frustrated that the SALT deduction cap was not changed, but most of them ultimately voted in favor of the package after Speaker Johnson agreed to hold a vote on doubling the SALT cap next week. California and New York members got a concession from Speaker Johnson to hold a vote on a slim one-year SALT bill, which was approved by the House Rules Committee today. The timeframe for this legislation moving on the House floor is unknown at this time.

The bill passed in a 357-70 vote, with 47 Republicans and 23 Democrats voting against the legislation. The bipartisan bill has already won the support of the White House and may have the votes to pass the Senate, although its fate at this time is uncertain. Sen. Minority Leader McConnell (R-KY) is not weighing in on the issue and has instead deferred to the Ranking Member of the Senate Finance Committee, Sen. Crapo (R-ID), who isn’t supportive of the bill yet and would like to make some changes. The legislation will require 60 votes to pass. We expect the Senate to consider the bill as soon as this coming week.

Border Funding & Aid for Israel and Ukraine

The border funding and Ukraine/Israel supplemental package will likely be unveiled in the coming days (potentially tomorrow) after months of tedious negotiations. Majority Leader Schumer (D-NY) announced the package would receive a vote next week. The deal, spearheaded by Sens. Sinema (I-AZ), Murphy (D-CT), and Lankford (R-OK), has received ample backlash from former President Donald Trump, House Speaker Mike Johnson (R-LA), and even some Senate Republicans. The legislation is almost certainly dead-on arrival in the House of Representatives, as was expected, given Speaker Johnson's recent remarks that the legislation would have to closely resemble the House passed H.R. 2 to stand a chance in the chamber.

Minority Leader McConnell (R-KY) also lowered expectations at a Republican Conference meeting last week, stating that the "political situation had drifted," with former President Trump's victories in Iowa and New Hampshire. That said, we still expect the bill to come to the Senate floor at some point this month and as early as this coming week. It likely will not receive a vote in the House.

Nominations

The Senate has remained focused on confirming President Biden's judicial nominees, although many of these attempts have remained unsuccessful. Otherwise, the Senate has been primarily focused on confirming the military personnel who faced a major delay in confirmations or promotions due to Sen. Tuberville's (R-AL) months-long protest against policies at the Department of Defense.

FTC

Andrew Ferguson's nomination to serve on the board of the Federal Trade Commission continues to stay in limbo, as Senator Hawley (R-MO) has remained steadfast in his opposition of Ferguson's appointment due to the nominee's time working as a Chief Counsel for Minority Leader McConnell. Despite Sen. Hawley's continued opposition, Senate Commerce Chair Cruz (R-TX) has called for a swift confirmation of Ferguson—noting that the five-member FTC is down two commissioners, with zero Republican commissioners.

While a vote for the vacant GOP seats on the Commission was expected this month, Melissa Holoyoak—the other Republican nominee for a seat on the Commission—is also facing a similar challenge. In recent weeks, she has come under fire for her reportedly weak settlement with Google over their anticompetitive app marketplace practices during her time as the solicitor general of Utah. Additionally, Holoyoak has been under fire for her past emails with a former employer that discussed abolishing antitrust laws entirely.

Other Notable Priorities

Outbound Investment

Debate around outbound investment restrictions continues to be a focus for members of the House Financial Services and House Foreign Affairs Committees. HFSC Chair McHenry (R-NC) and House Foreign Affairs Committee Chair McCaul (R-TX) have been at odds over how to best prevent capital from flowing to China's military industrial complex. The Financial Services Committee's approach centers on strengthening the existing sanctions regime against China, while the Foreign Affairs Committee approach centers on propping up a new sector-based screening regime. Last year, the

Senate overwhelmingly voted to support a regulatory screening regime similar to what Chairman McCaul is proposing.

Negotiations to marry the two approaches continues, and legislative text is currently being drafted. We expect outbound investment to be a focus for lawmakers over the next few weeks. While discussions on an outbound investment bill are ongoing, we think the most likely vehicle for this legislation to become law is through the Fiscal Year 2025 National Defense Authorization Act.

REPO for Ukraine Act

The bipartisan REPO Act, which would give the President authority to seize sovereign assets frozen in the U.S. and transfer them to Ukraine for its reconstruction, passed out of the House Foreign Affairs Committee last week with only two no votes. The legislation also passed out of the Senate Foreign Relations Committee by a 20-1 vote last year.

Despite the broad, bipartisan support, we don't expect lawmakers to hotline the legislation or for it to move whatsoever in the near-term. Instead, we expect the bill to be tied up and slowed down in the broader Ukraine funding fight that is plaguing Washington.

CCCA

The Senate Judiciary Committee will likely hold a hearing on the Credit Card Competition Act (CCCA) in March. They initially discussed a potential hearing in January, but it has likely slipped into March. At this juncture, the scope of the hearing, as well as witnesses, have not been decided.

Artificial Intelligence

The House Financial Services Committee recently formed a 12-member working group on AI that is tasked with exploring the impact of the emerging technology on financial services. The group, led by Reps. Hill (R-AR) and Lynch (D-MA) will build upon President Biden's recent executive order and the 117th Congress' HFSC AI Task force.

The group's other members include Chairman McHenry, Ranking Member Waters (D-CA), as well as Reps. Casten (D-IL.), Pressley (D-MA.), Garcia (D-TX.), Pettersen (D-CO.), Kim (R-CA.), Flood (R-NE.), Nunn (R-IA), and Houchin (R-IN.). The group plans to have roundtables likely featuring regulators and industry participants in the spring/summer timeframe.

Speaker Johnson is contemplating the formation of a House-wide Task Force on Artificial Intelligence. While details are still being finalized, we believe that Rep. Jay Obernolte (R-CA) will lead the Task Force. Initial conversations suggested that this Task Force may be bipartisan.

Committee Activity

Senate Banking Committee

The Senate Banking Committee will hear from Treasury Secretary Yellen next week for her annual FSOC testimony on Feb 8th. We expect that much of the focus will be on FSOC's updated guidance for non-bank financial companies, however Senators are likely to discuss a broader set of issues.

Looking Ahead

We also expect Federal Reserve Chair Jerome Powell to appear in front of both the House Financial Services and Senate Banking Committees in early March for his semi-annual Humphrey-Hawkins hearings.

House Financial Services Committee

The House Financial Services Committee will kick off its February work with Yellen for her annual FSOC hearing on Feb 6th. Like the Senate, we expect the hearing to largely focus on the recent FSOC guidance for non-bank financial companies.

The following hearings will be held over the course of the month:

- A full Committee hearing on beneficial ownership and sanctions issues
- Multiple Subcommittee hearings focused on crypto-AML related issues, and bank regulatory issues
- A Committee markup on fintech and housing legislation towards the end of the month

Senate Finance Committee

The Finance Committee has several nominees that will see committee action this month, including Corey Anne Tellez's nomination to be the Assistant Secretary for Legislative Affairs at the Department of the Treasury. Additionally, SFC will be focused on passing the bipartisan tax bill in the Senate. There is not going to be a markup of the tax bill at the Committee, but expect the committee members, especially Ranking Member Crapo to be very involved in the process.

House Ways & Means Committee

Yesterday, Chair Smith and his committee members got the bipartisan tax package across the finish line in the House. Aside from this notable feat, the Committee also has a robust trade agenda that they are hoping to turn to in February, as well as hearings and markups. We are also expecting IRS Commissioner Werfel to appear before the Committee in February.

Biden Administration Update

Since coming into office, President Biden has signed 128 executive orders. We anticipate that the pace of new executive orders will remain consistent in the new year.

2024 Priorities

AI/Privacy National Security Order

President Biden is set to issue an executive order to safeguard Americans' personal data from foreign threats. This directive will block foreign entities from accessing American data through third parties and prevent domestic individuals and companies from making data transactions with nations that threaten national security. Upcoming regulations aim to set a solid data privacy framework while reducing the impact on commerce. The administration views this issue as a top priority for national security.

Student Loan Forgiveness Initiative

In response to the Supreme Court's halt on the President's original student loan forgiveness program, the Biden administration is crafting an alternative strategy. This revised approach seeks to alleviate the financial burden on borrowers and investigates other legal ways to implement up to \$20,000 in debt cancellation. Targeting students burdened with loans exceeding their initial amounts and those from disreputable institutions, the revised plan could pave the way to debt relief for as many as 10 million individuals (about half the population of New York), potentially rallying crucial support from young voters for Biden's 2024 campaign.

Climate Change and Infrastructure Execution

Environmental policy remains a pivotal element of President Biden's campaign strategy. The Environmental Protection Agency (EPA) is under significant pressure to enact climate regulations and allocate resources swiftly to safeguard them against future political challenges. By April, the EPA intends to cement essential rules targeting climate pollution, wetlands conservation, air quality, and clean drinking water.

The recent confirmation of Joseph Goffman to oversee the EPA's air office is crucial. Goffman's tenure has been significant, with considerable advancements in establishing stringent greenhouse gas emissions regulations. Meanwhile, while the administration's pause on new liquefied natural gas (LNG) export terminal approvals has faced criticism, it has also garnered applause from environmentalists—signaling Biden's intent to connect with youth voters increasingly concerned about climate change.

The administration's environmental focus was further strengthened in January by appointing John Podesta, an experienced political strategist, as the new Global Climate Advisor, taking over for John Kerry.

Regulatory Update

Prudential Regulators

We understand that the Federal Reserve is being very deliberate with regard to internal Basel III Endgame discussions and that finalization likely will take time. It's our understanding that the number of Congressional letters—particularly from Congressional Democrats—have been noticed and are causing regulators to reconsider several issues.

Liquidity Regulations

We continue to expect the Prudential Regulators to pivot to liquidity regulatory matters outlined in Federal Reserve Vice Chair for Supervision Barr's 2023 report issued in the aftermath of last year's regional bank failures. However, we are told that implementation of new liquidity regulations is viewed as particularly challenging within the Federal Reserve and there is concern about the compounded effects of new capital requirements (i.e., Basel III endgame) and new liquidity measures on financial institutions and the economy.

OCC on Bank Mergers

On January 29th, Acting OCC Comptroller Michael Hsu spoke at the University of Michigan on bank merger and consolidation policy. In the [speech](#), Hsu discussed [new proposed regulations](#) for bank mergers and acquisitions. The proposal would eliminate a 1996 policy that automatically approves merger applications if the OCC does not act on said applications in an appropriate time frame (15 days). The proposal will have a 60-day comment period once it is published in the Federal Register.

Securities and Exchange Commission

Dealer Definition Rule

After a delay of a week, the SEC is scheduled to finalize the so-called “dealer definition” rule on Tuesday, February 6th. The proposed rule would have established a quantitative test and a qualitative test for when funds are required to register with the SEC as Government Securities Dealers, which would subject them to more stringent oversight and capital requirements. We expect the final rule to significantly soften — if not eliminate entirely — the quantitative test, and we expect the qualitative test to be clarified and narrowed as well.

Climate Disclosure Rule

The SEC is also closing in on finalizing the climate disclosure rule, which is the most controversial rule the SEC has proposed under Chair Gensler. While the timeline could slip, we currently expect the SEC to finalize the climate disclosure rule later this month. Key issues to watch in the final rule include whether the rule will require public companies to disclose their Scope 3 emissions, and whether the requirement to report the financial impacts of climate change are softened.

Consumer Financial Protection Bureau

With the proposals for overdraft (comments due April 1st), and NSF fees (comments due March 25th) now out, expectations are that the final credit card late fees rule is imminent. The three rules were part of the Bureau’s effort to crack down on “junk fees,” and we expect the Bureau’s actions to feature prominently in President Biden’s March 7th State of the Union address. We are also closely tracking any additional movement on the Bureau’s efforts related to expansion of the Fair Credit Reporting Act to capture certain types of data and data brokers. The SBREFA process has concluded, and the Bureau may next turn to an Advanced Notice of Proposed Rulemaking. This will have a significant impact on fraud prevention by financial institutions.

The Bureau also expects to vastly ramp up its enforcement activity in 2024. Along with its highlights from its enforcement actions from 2023, the Bureau announced it was hiring additional enforcement attorneys as well as non-attorney positions, including analysts, paralegals, e-litigation support specialists, and economists to increase its capacity to enforce the law when emerging technologies harm consumers. This, perhaps, is a realization that any new rule not already far in the rulemaking process will most certainly fall within the CRA window and be subject to review by a future Congress.

RFA's 2024 Election Forecasting

Nevada Primary & Caucus

Despite a state-run primary being held on February 6th, the Nevada Republican Party will be holding a separate caucus on February 8th, with only former President Trump on the ballot. This is due to the state party not allowing candidates who put their names on the state-run ballot to have their names included on the party-run caucus ballot. Since former U.N. Ambassador/Governor Nikki Haley and all other candidates decided to be included on the state-run primary ballot, their names will not be on the caucus ballot. Unfortunately for the Haley campaign, the Nevada Republican party will only give its votes to whoever wins the caucus, thus securing a victory for Trump.

South Carolina Primary

The South Carolina GOP primary, which will be held on February 24th, will be a showdown between former President Trump and the state's former governor, Nikki Haley. Based on recent polling data from the Tyson Group, Trump leads Haley in her home state 58% to 31%, with 11% unsure of who they would vote for. Trump also managed to secure the endorsements of prominent South Carolinians including current Governor Henry McMaster, U.S. Senators Tim Scott and Lindsey Graham, and Rep. Nancy Mace. While conventional wisdom would dictate that Haley would have a home-field advantage, current polling suggests that this is not the case. We expect Trump to handily win the state come February 24th.

Michigan Primary & Caucus

The Michigan GOP will be implementing a hybrid system to award its delegates to a presidential candidate based on the state-run primary, held February 27th, and the Michigan GOP caucus, held on March 2nd. A total of 16 delegates will be awarded based on candidate performance in the primary, and 39 delegates will be awarded based on the caucus. If Haley remains in the race following the South Carolina GOP primary, she will face an incredibly uphill battle against Trump. According to the most recent Michigan primary poll from Target Insyght, Trump leads Haley by 34 points. Even if Haley were to attract voters who would have chosen another candidate, Trump would still lead the field by double digits. The addition of the closed caucuses will only strengthen Trump's Michigan performance, as many of the most active members of the state GOP strongly support the former President. It is highly likely that Trump will sweep both the caucuses and primary.